

REMARKS

Claims 1 through 11 and 15 have been previously canceled. Claims 12 through 14 and 16 through 32 remain in the application. A marked up copy of the amended paragraph of the Specification is attached hereto as Appendix A.

The Specification has been amended on page 1 to properly identify the applications to which Applicants are claiming the benefit under 35 U.S.C. § 120.

Claim 21 was rejected under 35 U.S.C. § 102(e) as being unpatentable over Viano et al. (U.S. Patent No. 6,073,960). Applicants respectfully traverse this rejection.

*The difference only needs to be recited in the claims as* A rejection grounded on anticipation under 35 U.S.C. § 102 is proper only where the subject matter claimed is identically disclosed or described in a reference. In other words, anticipation requires the presence of a single prior art reference which discloses each and every element of the claimed invention arranged as in the claim. In re Arkley, 455 F.2d 586, 172 U.S.P.Q. 524 (C.C.P.A. 1972); Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1983); Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 U.S.P.Q. 481 (Fed. Cir. 1984).

However, the fact that an application has named a different inventive entity than a patent does not necessarily make that patent prior art. Even though an application and a patent have been conceived by different inventive entities, the 35 U.S.C. § 102(e) exclusion for a patent granted to "another" is not necessarily satisfied, since the application and patent share one or more persons as joint inventors and the applications which matured into patents grew from the same original application. See Applied Materials Inc. v. Gemini Research Corp., 15 U.S.P.Q.2d 1816 (Fed. Cir. 1988).

U.S. Patent No. 6,073,960 to Viano et al. discloses an air bag assembly. This patent issued on June 13, 2000 from an application that was filed on April 24, 1998 and named inventors Viano, Shah, Hopf, and Kaiser. The '960 patent discloses air bag assemblies 40 preferably mounted to the vehicle 10 generally at the front upper interior corners 28 formed at the intersection of the A-pillars 16 to the roof rails 11. The air bag assemblies 40 each include the basic component parts of an inflator 42 and an air bag 44. The side and frontal portions 50,54 of the air bags 44 deploy in downward directions as they inflate. The frontal portions 54 are positioned in front of the occupants 6 between the front structure 29 and the occupants 6.

The present application is Continued Prosecution Application (CPA) of a Continuation-In-Part (CIP) of the '960 patent and was filed on July 29, 1999 and named inventors Viano, Shah, Hopf, Kaiser, and Webber. Claim 21 claims a frontal air bag system for a vehicle including a frontal air bag adapted to be mounted solely to a pillar of the vehicle. The frontal air bag is inflated to extend downward and sideways in front of an occupant seated in the vehicle.

Viano et al. '960 is not prior art to the claimed invention of claim 21. Specifically, the present application and the Viano et al. '960 patent share one or more persons as joint inventors and the present application and the application which matured into the Viano et al. '960 patent grew from the same original application. The present application claims and is entitled to the effective filing date of the common parent application, which is April 24, 1998 under 35 U.S.C. § 120. Further, the claimed invention of claim 21 is not by "another" for purposes of Section 102(e) even if there is overlap between the two inventive entities. As a result, the Viano et al. '960 patent cannot be 102(e) prior art to claim 21 of the present

application. Therefore, it is respectfully submitted that claim 21 and the claims dependent therefrom are allowable over the rejection under 35 U.S.C. § 102(e).

Claims 12 through 14, 20, and 22 through 32 were rejected under 35 U.S.C. § 103 as being unpatentable over Viano et al. (U.S. Patent No. 6,073,960) in view of Yamada (U.S. Patent No. 5,884,937). Applicants respectfully traverse this rejection.

U.S. Patent No. 5,884,937 to Yamada discloses an air bag device. An air bag device includes an inflator 16 disposed within an instrument panel 14, which is positioned substantially in front of a driver's seat 12 of a vehicle 10. The inflator 16 is connected to an air bag body 20 via a gas-guiding pipe 18. The air bag body 20 covers substantially the upper half of a front side window 22. A front pillar mounting portion 20A of the air bag body 20 is fixed to a vehicle inner side portion 26A of a front pillar 26 of the vehicle 10 by fixing members 29 such as bolts or the like. A roof side rail mounting portion 20B of the air bag body 20 is fixed to a vehicle inner side portion 28A of a roof side rail 28 by the fixing members 29. The fixing members 29 are inserted into mounting holes 31 which are formed at predetermined intervals in the front pillar mounting portion 20A and the roof side rail mounting portion 20B. The air bag body 20 is accommodated in the housing 30 in a folded state. The housing 30 extends along the front pillar and the roof side rail 28 and includes a lid 30A and a base 30B. Yamada does not disclose an air bag operatively connected to an inflator and mounted solely to a pillar of a vehicle to extend downward and sideways in front of an occupant seated in the vehicle when inflated. Yamada et al. '937 discloses a side curtain air bag and does not disclose a trim molding covering a frontal air bag and mounted to a pillar or a frontal air bag to deploy downward and sideways in front of an occupant seated in the vehicle when inflated.

In contradistinction, claim 12 claims the present invention as a frontal air bag system for a vehicle including an inflator adapted to be mounted to vehicle structure and a diffuser connected to the inflator and adapted to extend along a pillar of the vehicle. The frontal air bag system also includes a frontal air bag operatively connected to the diffuser and adapted to be mounted solely to the pillar. The frontal air bag system further includes a trim molding covering the frontal air bag and adapted to be mounted to the pillar. The frontal air bag is inflated by the inflator via the diffuser to extend downward and sideways in front of an occupant seated in the vehicle and the trim molding is displaced during deployment of the frontal air bag.

None of the references cited, either alone or in combination with each other, teach or suggest the claimed invention of claim 12. Specifically, Viano et al. '960 does not qualify as prior art under 35 U.S.C. § 102(e) and the combination cannot be made. Yamada et al. '937 merely discloses an air bag device having a front pillar mounting portion of an air bag fixed to a vehicle inner side portion of a front pillar and a roof side rail mounting portion of the air bag body fixed to a vehicle inner side portion of a roof side rail. In Yamada et al. '937, the air bag is a side curtain air bag and does not teach how to deploy a frontal air bag from the A-pillar. Yamada et al. '937 lacks a trim molding covering a frontal air bag and mounted to a pillar, which is displaced during deployment of the frontal air bag. Yamada et al. '937 alone, if modifiable or combinable with another reference other than Viano et al. '960, fails to teach or suggest the combination of a frontal air bag system including a frontal air bag operatively connected to an inflator and mounted solely to a pillar of a vehicle, a trim molding covering the frontal air bag and mounted to the pillar, and the frontal air bag inflated by the inflator to extend downward and sideways in front of an occupant seated in the vehicle and the trim molding is displaced during deployment of the frontal air bag as claimed by Applicants. The claimed combination is novel

and unobvious because the Yamada et al. '937 reference still does not teach how to deploy a frontal air bag from the A-pillar. Therefore, it is respectfully submitted that claim 12 and the claims dependent therefrom are allowable over the rejection under 35 U.S.C. § 103.

As to claim 20, claim 20 claims the present invention claimed as a frontal air bag system for a vehicle including an inflator adapted to be remotely mounted to vehicle structure and a diffuser adapted to be connected to the inflator and adapted to extend along a pillar of the vehicle. The frontal air bag system also includes a frontal air bag mounted solely to the pillar and having at least one panel and a neck portion connected to the at least one panel. The neck portion is operatively connected to the diffuser. The frontal air bag system further includes a trim molding covering the frontal air bag and adapted to be mounted to the pillar. The frontal air bag is inflated by the inflator via the diffuser to extend downward and sideways in front of an occupant seated in the vehicle and the trim molding is displaced during deployment of the frontal air bag.

The United States Court of Appeals for the Federal Circuit (CAFC) has stated in determining the propriety of a rejection under 35 U.S.C. § 103, it is well settled that the obviousness of an invention cannot be established by combining the teachings of the prior art absent some teaching, suggestion or incentive supporting the combination. See In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 227 U.S.P.Q. 657 (Fed. Cir. 1985); ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 221 U.S.P.Q. 929 (Fed. Cir. 1984). The law followed by our court of review and the Board of Patent Appeals and Interferences is that “[a] prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art.” In re Rinehart, 531

F.2d 1048, 1051, 189 U.S.P.Q. 143, 147 (CCPA 1976). See also In re Lalu, 747 F.2d 703, 705, 223 U.S.P.Q. 1257, 1258 (Fed. Cir. 1984) (“In determining whether a case of prima facie obviousness exists, it is necessary to ascertain whether the prior art teachings would appear to be sufficient to one of ordinary skill in the art to suggest making the claimed substitution or other modification.”)

None of the references cited, either alone or in combination with each other, teach or suggest the claimed invention of claim 20. Specifically, Viano et al. ‘960 does not qualify as prior art under 35 U.S.C. § 102(e) and the combination cannot be made. Yamada et al. ‘937 merely discloses an air bag device having a front pillar mounting portion of an air bag fixed to a vehicle inner side portion of a front pillar and a roof side rail mounting portion of the air bag body fixed to a vehicle inner side portion of a roof side rail. In Yamada et al. ‘937, the air bag is a side curtain air bag and does not teach how to deploy a frontal air bag from the A-pillar. Yamada et al. ‘937 lacks a trim molding covering a frontal air bag and mounted to a pillar, which is displaced during deployment of the frontal air bag. Yamada et al. ‘937 alone, if modifiable or combinable with another reference other than Viano et al. ‘960, fails to teach or suggest the combination of a frontal air bag system including a frontal air bag having a neck portion operatively connected to an inflator and mounted solely to a pillar of a vehicle, a trim molding covering the frontal air bag and mounted to the pillar, and wherein the frontal air bag is inflated by the inflator via a diffuser to extend downward and sideways in front of an occupant seated in the vehicle when inflated and the trim molding is displaced during deployment of the frontal air bag as claimed by Applicants. The claimed combination is novel and unobvious because the neck portion of the frontal air bag allows deployment of the main portion of the bag in front of the occupant. The Yamada et al. ‘937 reference still does not teach how to deploy a frontal air

bag from the A-pillar. Therefore, it is respectfully submitted that claim 20 is allowable over the rejection under 35 U.S.C. § 103.

Obviousness under § 103 is a legal conclusion based on factual evidence (In re Fine, 837 F.2d 1071, 1073, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988), and the subjective opinion of the Examiner as to what is or is not obvious, without evidence in support thereof, does not suffice. Since the Examiner has not provided a sufficient factual basis which is supportive of his position (see In re Warner, 379 F.2d 1011, 1017, 154 U.S.P.Q. 173, 178 (C.C.P.A. 1967), cert. denied, 389 U.S. 1057 (1968)), the rejection of claims 12 through 14, 20, and 22 through 32 is improper. Therefore, it is respectfully submitted that claims 12 through 14, 20, and 22 through 32 are allowable over the rejection under 35 U.S.C. § 103.

Based on the above, it is respectfully submitted that the claims are in a condition for allowance, which allowance is solicited.

Respectfully submitted,

By: 

Daniel H. Bliss  
Reg. No. 32,398

Delphi Technologies, Inc.  
Legal Staff – Intellectual Property  
P.O. Box 5052  
Troy, Michigan 48007  
(248) 267-5703

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**APPENDIX A****VERSION OF THE SPECIFICATION WITH MARKINGS TO SHOW THE  
CHANGES**

Please amend the pending paragraph beginning on page 1, lines 5 through 7 as follows:

The present application is a continuation of application Serial No. 09/363,062, filed July 29, 1999, which is a continuation-in-part of application Serial No. 09/065,912, filed April 24, 1998 and entitled "AIR BAG ASSEMBLY".